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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,539	Applicant(s) RADATTI ET AL.	
	Examiner Drew E. Becker	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 7-15, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-31, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/30/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-4, 7-15, and 32-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/6/07.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 16-31 and 34-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not specifically pointed out where the new claim limitations are supported by the application.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 16-31 and 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claim 16 recites placing “a shell” containing the food in a frying apparatus. It is not clear whether this is a new shell, or the previously mentioned shell.
7. Claim 20 recites “a food”. It is not clear whether this is the previously mentioned food, or a new food product.
8. Claim 26 recites “placing food to be cooked within the shell” as well as “placing to be cooked within a shell”. It is not clear when the food is placed in the shell, or even which shell is used.
9. Claim 31 recites extruding dough to “a shell”. It is not clear whether this is a new shell, or the previously mentioned shell.
10. Claim 34 recites the limitation "said first shell". There is insufficient antecedent basis for this limitation in the claim.
11. Claim 34 recites the limitation "said second shell". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 16, 19, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendez [Pat. No. 1,076,383].

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Mendez teaches a method for cooking food by providing a shell including two plates which are hinged together (Figures 1-2, #2-6), opening the shell (Figure 2), placing food into the open shell (page 1, line 105), closing the shell and placing it in the frying oil (page 2, line 5), the food inherently being shaped during its preparation, and the metal plates inherently providing conductive heating of the food contained within the device.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mendez. Mendez teaches the abovementioned concepts. Mendez does not specifically recite providing a final shape for the food after it has been immersed in the oil. It would have been obvious to one of ordinary skill in the art to provide a final shape to the food after it has been immersed in the method of Mendez since Mendez teaches cooking fish, potatoes, and steak (page 1, line 15) and since these foods were commonly shaped by the consumer by cutting the food into smaller bite-size portions with a knife and fork prior to eating it.

16. Claims 17-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendez as applied above, in view of Hunter et al [Pat. No. 5,988,048].

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Mendez teaches the above mentioned concepts. Mendez does not recite the oil being at 25-400°F, preferably 325-375°F, and the food being dough. Hunter et al teach a method of cooking food by placing it in a plural shells (Figure 13), placing the shells in a fryer in order to cook the food (abstract), the oil being at 350-360°F (column 7, line 15), the food being dough (column 8, line 24), the walls of the shells inherently shaping the food during cooking, the metal walls of the shells inherently providing conductive heating of the food when contact is made, and assembling the shells before use (Figure 13). It would have been obvious to one of ordinary skill in the art to incorporate the oil temperature and dough of Hunter et al into the invention of Mendez since both are directed to methods of frying food with in shell, since Mendez simply did not mention the oil temperature, since taught food in general without excluding dough (page 1, line 15), since frying oil was commonly used at this temperature as shown by Hunter et al, and since dough was commonly fried within shells as shown by Hunter et al.

17. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendez, in view of Hunter et al, as applied above, and further in view of Aurio et al [20060099324] and Young et al [Pat. No. 6,048,564].

Mendez and Hunter et al teach the above mentioned concepts. Mendez and Hunter et al do not recite the dough having konjac glucomannan, animal-based protein concentrate, and baking powder. Aurio et al teach a dough comprising konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) as well as mixing (paragraph 0085) which naturally would have provided aeration of the mixture. Young et al teach a method for making dough comprising konjac

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glucomannan (column 4, lines 29-49) and baking powder (column 17, line 37). It would have been obvious to one of ordinary skill in the art to incorporate the konjac glucomannan, animal-based protein concentrate, and baking powder of Aurio et al and Young et al into the invention of Mendez, in view of Hunter et al, since all are directed to methods of making food, since Mendez taught food in general (page 1, line 15), since Hunter et al already included dough as the food but simply did not list its ingredients, since Aurio et al teach that konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) were commonly used in conjunction on food, since Young et al teach that doughs containing konjac glucomannan commonly had baking powder to provide leavening (column 17, line 37), and since all of these ingredients were commonly used in doughs in order to provide the desired taste, texture, and aroma.

18. Claims 16-20 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyon et al [Pat. No. 2,244,193] in view of Mendez.

Guyon et al teach a method for cooking food by providing a shell including two plates (Figures 1, #10-11), opening the shell, placing food into the open shell, closing the shell, and placing it in the frying oil (page 1, column 1, lines 24-34), the oil being at 375-425°F (page 1, column 2, line 2), the food inherently being shaped during its preparation, and the metal plates inherently providing conductive heating of the food contained within the device. Guyon et al do not recite the plates being hinged. Mendez teaches a method for cooking food by providing a shell including two plates which are hinged together (Figures 1-2, #2-6). It would have been obvious to one of ordinary skill in the art to

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incorporate the hinged connection of Mendez into the invention of Guyon et al since both are directed to methods of cooking food in a shell, since Guyon et al already taught using any suitable clamping means (page 1, column 2, line 15), and since cooking shells were commonly hinged in order to provide easier opening as shown by Mendez.

19. Claims 16-21, 26-30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki [Pat. No. 4,313,964] in view of Mendez.

Dembecki et al teach a method for cooking food by providing a shell including two plates (Figures 1, #10 & 15), opening the shell, placing dough into the open shell, closing the shell, and placing it in the frying oil (Figure 6), the oil being at 350-375°F (column 5, line 22), plural shells linked together (Figure 5a, #46), the food inherently being shaped during its preparation, and the metal plates inherently providing conductive heating of the food contained within the device. Dembecki et al do not recite the plates being hinged. Mendez teaches a method for cooking food by providing a shell including two plates which are hinged together (Figures 1-2, #2-6). It would have been obvious to one of ordinary skill in the art to incorporate the hinged connection of Mendez into the invention of Dembecki et al since both are directed to methods of cooking food in a shell, since Dembecki et al already included separate shell plates (Figure 1, #10 & 15), and since cooking shells were commonly hinged in order to provide easier opening and also to keep the separate shell plates from becoming lost as shown by Mendez.

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20. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki, in view of Mendez, as applied above, and further in view of Aurio et al [20060099324] and Young et al [Pat. No. 6,048,564].

Dembecki and Mendez teach the above mentioned concepts. Dembecki and Mendez do not recite the dough having konjac glucomannan, animal-based protein concentrate, and baking powder. Aurio et al teach a dough comprising konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) as well as mixing (paragraph 0085) which naturally would have provided aeration of the mixture. Young et al teach a method for making dough comprising konjac glucomannan (column 4, lines 29-49) and baking powder (column 17, line 37). It would have been obvious to one of ordinary skill in the art to incorporate the konjac glucomannan, animal-based protein concentrate, and baking powder of Aurio et al and Young et al into the invention of Dembecki, in view of Mendez, since all are directed to methods of making food, since Dembecki already included dough as the food but simply did not list its ingredients, since Aurio et al teach that konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) were commonly used in conjunction on food, since Young et al teach that doughs containing konjac glucomannan commonly had baking powder to provide leavening (column 17, line 37), and since all of these ingredients were commonly used in doughs in order to provide the desired taste, texture, and aroma.

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21. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki, in view of Mendez, as applied above, and further in view of Cummins [Pat. No. 5,731,022].

Dembecki and Mendez teach the above mentioned concepts. Dembecki and Mendez do not recite extruding dough into the shell. Cummins teaches a method for extruding dough into portions (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the extrusion feeding of Cummins into the invention of Dembecki, in view of Mendez, since all are directed to methods of molding food, since Dembecki already included an automated dough source for applying a metered quantity of dough to the shell (Figure 1, #25) and since Cummins teach that dough was effectively supplied in metered quantities by extruding it (abstract).

22. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki, in view of Mendez, as applied, and further in view of Henessey [Pat. No. 6,508,166].

Dembecki and Mendez teach the above mentioned concepts. Dembecki and Mendez do not recite the first shell having a c-shaped linkage, the second shell having a pin linkage, and connecting them. Dembecki teaches linking the plates via a c-shaped linkage and a pin linkage (Figure 3). Henessey teaches a method for molding food by providing removable molds which are linked together (Figure 3-4). It would have been obvious to one of ordinary skill in the art to combine the teachings of Henessey with Dembecki to provide shells linked by a c-shaped linkage and pin linkage since both are directed to methods of molding dough, since Dembecki already taught c-shaped

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linkages and pin linkages to link the shell plates (Figure 3), since Henessey teaches remaovable linking the plural shells (Figure 3-4), and since removably linking plural shells via the linkages of Dembecki would have provided increased cooking flexibility to the operator by allowing them to cook the desired quantity of food in a single or plural molds.

Response to Arguments

23. Applicant's arguments with respect to claims 16-31 and 34-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794